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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|---------------------------------|---------------------|------------------|
| 09/981,457 | 10/16/2001 | Nicholas Moffat Irving-Antillon | 104135-0002 | 5915 |
| 24267 | 7590 | 11/17/2003 | EXAMINER | |
| CESARI AND MCKENNA, LLP 88 BLACK FALCON AVENUE BOSTON, MA 02210 | | | RABAGO, ROBERTO | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1713 | |
| DATE MAILED: 11/17/2003 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

CLO 1

| | | |
|------------------------------|------------------------|-------------------------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 09/981,457 | IRVING-ANTILLON, NICHOLAS MOFFAT |
| | Examiner Rob Rábago | Art Unit 1713 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 27 August 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-5 is/are rejected.
- 7) Claim(s) 6 and 7 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.
- 13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
 - a) The translation of the foreign language provisional application has been received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

| | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____. | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Objections to the specification and to claim 1 are withdrawn in view of amendment.

Rejection over Pretzer is withdrawn in view of argument.

Claim Rejections - 35 USC § 103

2. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mackenzie et al. (US 6,103,658) for the reasons set forth in item 9 of the Office action mailed 2/28/2003.

Applicant's arguments filed 8/27/2003 have been fully considered but they are not persuasive. Applicant's allegation that the reference is "unrelated art" is baseless. The reference is directed to catalysts and has suggested structures within the scope of those claimed by applicant. Further, applicant's argument directed to the species where $y=0$ is ineffective because the claims are not limited thereto. Applicant has presented no argument which indicates that the catalyst structures suggested in the reference are not within the claimed scope.

3. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cook et al. (US 6,511,934).

The reference discloses catalyst compositions comprising transition metal complexes of Formula 1 and Formula 2 (col. 2), each of which are within the instantly

claimed scope when R_1 and R_2 are hydride (col. 2, line 34). For the reference structure to comprise a metal in the +2 oxidation state, $n=2$ (col. 2, line 51), and cobalt and iron are specifically suggested at col. 3, line 32. One of ordinary skill in the art would be motivated to obtain a catalyst structure within the instantly claimed scope because patentee has suggested such complexes as useful components of a catalyst formulation, with reasonable success expected.

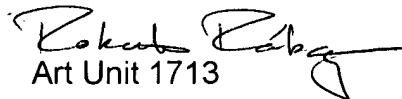
4. Claims 6 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art currently of record has not disclosed or suggested a catalyst comprising the particular species of these claims.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rob Rábago whose telephone number is (703) 308-4347. The examiner can normally be reached on Monday - Friday from 8:30 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached at (703) 308-2450. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

ROBERTO RABAGO
PATENT EXAMINER


Art Unit 1713

RR
November 13, 2003